

1 Lynda J. Zadra-Symes (SBN 156,511)  
Lynda.Zadra-Symes@kmob.com  
2 Jeffrey L. Van Hoosear (SBN 147,751)  
Jeffrey.VanHoosear@kmob.com  
3 David G. Jankowski (SBN 205,634)  
David.iankowski@kmob.com  
4 KNOBBE, MARTENS, OLSON & BEAR, LLP  
2040 Main Street  
5 Fourteenth Floor  
Irvine, CA 92614  
6 Phone: (949) 760-0404  
Facsimile: (949) 760-9502

7 Attorneys for Defendant/Counter-Plaintiff,  
8 KEATING DENTAL ARTS, INC.

9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12 SOUTHERN DIVISION

13 JAMES R. GLIDEWELL DENTAL  
14 CERAMICS, INC. dba GLIDEWELL  
LABORATORIES,

15 Plaintiff,

16 v.

17 KEATING DENTAL ARTS, INC.

18 Defendant.

19 AND RELATED COUNTERCLAIMS.  
20  
21  
22  
23

) Civil Action No.  
) SACV11-01309-DOC(ANx)

) **DECLARATION OF DIANE**  
) **MALLOS DONICH IN**  
) **SUPPORT OF KEATING'S**  
) **OPPOSITION TO**  
) **GLIDEWELL'S MOTION FOR**  
) **PARTIAL SUMMARY**  
) **JUDGMENT RE TRADEMARK**  
) **MISUSE, UNFAIR**  
) **COMPETITION, UNCLEAN**  
) **HANDS, FAIR USE, AND**  
) **ESTOPPEL**

) Date: December 17, 2012

) Time: 8:30 a.m.

) Location: Courtroom 9D

) Honorable David O. Carter

1 I, Diane Mallos Donich, hereby declare as follows:

2 I am the Chief Financial Officer for Keating Dental Arts, Inc.  
3 ("Keating"). I have personal knowledge of the matters set forth herein. If  
4 called upon to testify, I could and would testify as follows:

5 1. Attached as **Exhibit A** is a true and correct copy of internal reports  
6 showing monthly sales of our KDZ Bruxer zirconia crown from May 2011  
7 through October 15, 2012. **These documents are considered confidential and**  
8 **marked as Attorneys' Eyes Only.** These documents bear production numbers  
9 KDA-003543 through KDA-003560.

10 2. In August 2011, Glidewell Laboratories filed the present lawsuit  
11 against Keating Dental Arts relating to Keating's "KDZ Bruxer" product.

12 3. In or around December 2011, Keating significantly decreased its  
13 advertising of its KDZ Bruxer product due to the existence of the trademark  
14 infringement lawsuit filed by Glidewell Laboratories. Keating Dental Arts  
15 reduced its advertising of the KDZ Bruxer product as a business decision to  
16 mitigate potential liability from the lawsuit.

17 4. As illustrated in Exhibit A, sales of Keating's KDZ Bruxer product  
18 grew steadily after its launch in May 2011 through December 2011. After this,  
19 following Keating Dental Arts' reduction in its advertising of the KDZ Bruxer  
20 product, the sales of the KDZ Bruxer product stagnated and declined.

21  
22 I declare under penalty of perjury under the laws of the United States of  
23 America that the foregoing is true and correct.

24 Executed Nov. 26, 2012, in Irvine, CA.

25  
26   
27 Diane Mallos Donich  
28

# **EXHIBIT A**

**ATTORNEYS' EYES ONLY**

**FILED UNDER SEAL PURSUANT  
TO JANUARY 30, 2012  
CONFIDENTIALITY ORDER**